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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELIJAH COOPER,

Defendant.

) No. CR 13-693 SI

) **UNITED STATES FURTHER RESPONSE IN**
) **OPPOSITION TO DEFENDANT'S MOTIONS**

) Date: November 12, 2014.

) Time: 11:00 a.m.

I. INTRODUCTION:

Mr. Balogh is now claiming the government is lying about the basis for a one-week extension, that we are in the business of unauthorized monitoring of his client's communications with Anthony Knight and Tristan Higgins and that the government needed a warrant to get cell site data.

The government has been clear with Mr. Balogh and the Court from the start. There has been no unauthorized interception or surveillance in this case. The evidence the government obtained was pursuant to judicial process. Mr. Cooper's motions should be denied.

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1 II. DISCUSSION:

2 Mr. Balogh is now questioning whether the government actually reassigned this case. The fact
3 that the government reassigned this case is attested to in the attached declaration.

4 Balogh further questions whether there was a pen register application and order authorized by
5 Judge James. The government's application and Judge James' order have been provided to the Court.
6 That application and order expressly prohibit the seizure of GPS data.

7 Mr. Balogh continues to conflate the terms "GPS" and "cell site data." Either Mr. Balogh is
8 deliberately trying to mislead the Court, or he fails to recognize that GPS data and cell site location data
9 or information (CSLI) are dealt with differently by the Courts. What is clear is that the cases Balogh
10 cites distinguish GPS data from CSLI. *In re United States for an Order Directing Provider of Elec.*
11 *Commun. Serv. to Disclose Records to the Gov't*, 620 F.3d 304 (3d Cir. Pa. 2010). And, all of the circuit
12 courts to have addressed the issue have held that the government does not need a warrant to retrieve cell
13 site data. 620 F.3d at 317-318; *In re Application of the United States of Am. for Historical Cell Site*
14 *Data*, 724 F.3d 600, 614-615 (5th Cir. 2013). The obvious exception was *Davis*, 754 F.3d at 1205 (11th
15 Cir. 2014) but *Davis* is no longer valid law.

16 Mr. Balogh continues to rail about what he believes is the government's unauthorized
17 surveillance of text messages between Anthony Knight, Tristan Higgins and Mr. Cooper. What Balogh
18 fails to understand is that the government does not have the capacity to go rogue and start intercepting
19 electronic communications. Electronic service providers have process compliance departments and
20 legal counsel. They will not give the government information or cooperation without judicial process.

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1 There may be government agencies somewhere that can surreptitiously tap into electronic service
2 providers databases. The lowly civil servants at 450 Golden Gate Avenue need a document signed by a
3 judge.
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5 Date: November 11, 2014.

Respectfully Submitted,

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7 MELINDA HAAG
8 United States Attorney

9 /s/

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11 BENJAMIN TOLKOFF
12 Assistant United States Attorney
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